In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
CHARLES BOWEN.
} No. 875.

BRIEF FOR APPELLANTS.

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The defendants below have appealed from the judgment of the Court of Claims in favor of the plaintiff below for the sum of $264.60.

A large number of pensioners, inmates of the Soldiers' Home, have brought or are about to bring similar suits, and the decision in this will affect on the one hand their right to retain their pensions while enjoying the advantages of the Home, and on the other hand the revenues of the institution.

FACTS.

The facts found by the court below are substantially as follows:

Bowen, from the 9th March, 1861, to the 9th March, 1864, was a private in the Army of the United States. During that time, under the provisions of section 7, act 3d March, 1859 (11 Stat., 434), there was deducted from his pay the sum of $4.57. In March, 1865, he was granted

an invalid pension, which (with certain additions) is still in force.

On the 13th September, 1876, he was admitted to the Soldiers' Home, and his pension from that date to the 4th December, 1877, was regularly paid to the treasurer of that institution.

As the law stood prior to the revision of the statutes of the United States, pensioners voluntarily receiving the benefits of the Home were bound to transfer their pensions to the asylum, whether they had otherwise contributed to its support or not.

But subsequent to December 1, 1873, the pensioned inmates who had contributed 12½ cents per month during their service claimed that they had been relieved from this transfer, and upon reference of the question by the Secretary of the Interior to the Attorney-General, the latter, on the 22d November, 1877, gave his opinion adverse to the pensioners (see appendix to this brief).

Dissatisfied with this opinion, the plaintiff brought his action in the Court of Claims.

And the whole controversy is embodied in the single inquiry, Did the revision of the statutes repeal the law requiring inmates of the Soldiers' Home who had contributed during their service to transfer their pensions to the institution?

The act of 1851 provided "that any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided upon transferring his pension to said asylum for and during the period that he may continue to receive such benefits."

The act of 1859 provided "that all pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the institution for and during the

time they may remain therein and voluntarily continue to receive its benefits."

Section 4814 R. S. provides that all soldiers of the Army of the United States who have contributed or may hereafter contribute, and the invalid and disabled soldiers, shall, under the restrictions, &c., be members of the Soldiers' Home.

Section 4820 provides that "The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain and voluntarily receive its benefits."

That the revisers had before them section 6 of the act of March 3, 1859, is apparent not only from their marginal notes to section 4820, but from the repetition of the language "during the time they (may) remain therein and voluntarily (continue to) receive its benefits." The words "*may*" and "*continue to*" clearly were omitted as surplusage, as were also the words "*transfer and*" before the word "*surrender.*"

The interpolation of the word "*such*," by the revisers, between the words "*all*" and "*pensioners*," in section 6 of the act March 3, 1859, has given rise to the present controversy; the only possible controversy as to the effect of the revision on the Soldiers' Home.

It is asserted by the appellee that the word "*such*" works so manifest a change in the law, that the general intent of the revision, namely, to "revise and consolidate the statutes in force on the 1st of December, 1873," is not to be taken into consideration, nor in his view is it of any importance what had been the settled law by clear expressions in the statutes for fourteen years previous to the revision. And it is contended by the appellant that these two considerations, together with the otherwise rigid adherence in this chapter to the language,

chronology, and provisions of the antecedent law demonstrate that the revisers only attempted to collate, and that Congress meant to work no change in the law as it stood on the 1st of December, 1873.

Spencer, J., in Taylor *v.* Delancy (2 Caine's Cases, 149), discussing the revision of 1801, lays down the following rule: "Where the law antecedently to the revision was settled, either by clear expressions in the statutes, or adjudications on them, the mere change of phraseology shall not be deemed or construed a change of the law, unless such phraseology evidently purports an intention in the legislature to work a change."

This rule was approved and adopted by Kent (himself one of the revisers of 1801), in Yates's case (4 Johnson, 317, 359); and it has received the indorsement of all courts which have considered the question.

Burnham *v.* Stevens (33 N. H., 247); Ash *v.* Ash (9 Ohio State, 383); Conger *v.* Barker (11 Ohio State, 1); Croswell *v.* Crane (7 Barbour, 191); Ennis *v.* Crump (6 Texas, 34); Dominick *v.* Michael (4 Sandf., 374); Goodell *v.* Jackson (20 Johnson's Rep., 722); Theriat *v.* Hart (2 Hill, 380); Hoffman *v.* Delihantz (13 Abbot Pr., 388); *in re* Brown (21 Wendell, 316); Allen *v.* Ramsey (6 Metc., 635).

In Dominick *v.* Michael (4 Sand., 374, p. 409), Duer, J., applying the rule in Taylor *v.* Delancy, says, "Its meaning undoubtedly is, that the construction of a revised statute is not to be varied from that which it had previously borne, provided the words used in its revised form admit of the same interpretation as those in the original." He says (p. 408), "We shall not deny that this construction (*i. e.* the construction presented by the party attempting to show a change wrought by the revis-

ion) of the statute would be highly reasonable were its provisions wholly new, or if, although founded on existing law, they involved such a change of phraseology as of necessity to require a different interpretation; but this construction, reasonable as it seems, must be rejected, if the section we are considering so far from being entirely new was a mere revision of an existing law."

In Ennis & Reynolds *v.* Crump (6 Texas, 34), the court, Wheeler, J., states the law to be "that the mere change in phraseology in the revision of a statute before in force will not work a change in the law previously declared, unless it indisputably appear that such was the intention of the legislature."

In the case of Croswell *v.* Crane (7 Barbour, p. 191), the alteration of the revisers consisted in the omission of the words "from the making thereof" after the term fixed by the statute for leases that might be made without writing, and the court, citing Taylor *v.* Delancey (2 Caines, 143), and *in re* Yates (4 Johns., 359), held that "there was nothing in the phraseology to authorize the inference that the legislature intended to change the law which existed antecedently in respect to the time from which the term for which parol leases might be granted should be computed."

In Ash *v.* Ash (9 Ohio State, 383), the statute under consideration was the one providing for the revocation of a will by the subsequent birth of a child. The alteration by the revision was the addition of the words in italics, to wit, "shall afterward have a child *living or born alive after his death*." The court applying the rule in Taylor *v.* Delaney held that the birth of a child after the execution of a will revoked it, and this independent of the testator surviving the child.

The case of Hoffman *v.* Delihanty (13 Abbott, 388, p. 391), is one where the court adverts to arguments from extrinsic circumstances and considerations to show that the legislature did not intend by the revision to alter the law.

In Hughes *v.* Farrar (45 Maine, 72), the court held that if there is any doubt on the construction of the revision it is authorized to look at the law as it had existed previous to the revision.

These cases, together with Whitcombe *v.* Rood (20 Vermont, 49), and Murphy (3 Zabriskie, 180, which will be presented fully on argument), we think establish conclusively our right to examine the pre-existing law to ascertain whether Congress meant by the insertion of one word to work a radical change in the law.

And the examination of the law by Chief Justice Drake, in his dissenting opinion, is so elaborate and thorough that we cannot more fully present the subject than by quoting from him.

"By section 1 of the act of March 3, 1851 (9 Stat. L., 595), authorizing the establishment of the Soldiers' Home, it was required that all members of the Home should have contributed to its funds, according to section 7 of the same act, which authorized twenty-five cents per month to be deducted for that purpose from every soldier's pay. This was, by section 7 of the act of March 3, 1859 (11 Stat. L., 431), reduced to twelve and a half cents per month.

"By section 4 of the act of 1851 the classes of persons who should be entitled to the rights and benefits of membership in the Home were designated as follows:

"'1. Every soldier of the Army of the United States who shall have served, or may serve honestly and faithfully, twenty years in the same.'

"This referred only to soldiers of the regular Army.

"'2. Every soldier, and every discharged soldier, whether regular or volunteer, who shall have suffered by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability has not been occasioned by his own misconduct.'

"This specification would, of course, include pensioners for 'disease or wounds incurred in the service and in the line of duty.'

"By the operation of section 1, requiring previous contribution to the funds for the Home by all who became members of it, no pensioner who had not contributed to those funds could become a member. This excluded all soldiers pensioned before the act of 1851 was passed; for they could not possibly have contributed to funds which had no existence until after that act took effect.

"To prevent this exclusion this proviso of section 5 of that act was inserted:

"'*Provided*, That any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided, upon transferring his pension to said asylum for and during the period that he may voluntarily continue to receive such benefits.'

"The result of these two provisions was, as regards pensioners, to divide them into two classes, those pensioned before and those pensioned after the act of 1851. The former were required to surrender their pensions on entering the Home; the latter were not. The unjust and unfortunate character of this discrimination could

not, in the nature of things, practically appear until the lapse of sufficient time after the passage of the act for soldiers to become disabled by disease or wounds incurred after that time; all of whom would necessarily have contributed to the funds, and therefore could not have been required to surrender their pensions. When such began to enter the Home, the unjust character of the law was practically displayed, in requiring one who had been pensioned before the act of 1851 to make his contribution to the funds by giving up his pension; while one pensioned after that act, and who had, out of his pay, contributed even no more than a single payment of 25 cents, could have all the benefits of the Home, and keep his pension besides.

"This condition of things evidently required a corrective, which was applied by section 6 of the abovementioned act of March 3, 1859, as follows:

"'All pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the institution for and during the time they may remain therein and voluntarily continue to receive its benefits.'

"After this enactment no pensioner could enter the Home without surrendering his pension; and so stood the law up to the time of the Revised Statutes. Did the Revised Statutes change that law? The claimant contends that they did; the defendants insist that they did not.

* * * * *

"As before shown, section 6 of the act of 1859 required all pensioners to surrender their pensions on entering the Home.

"The claimant contends that that provision is not to

be found in the revision; but a different one, in section 4820, which in effect sets aside section 6 of the act of 1859, and reinstates the provisions of the act of 1851, the unjust character of which has been shown. Section 4820 is as follows:

"'The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldier's Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits.'

"Did Congress intend in this section to legislate, or merely to embody existing law? In deciding that point, the words should be studied, not by themselves, nor merely in connection with the other provisions of the chapter, but in connection with the whole act promulgating the revision; and hence the influence of section 5595 in their interpretation.

"Upon examining that chapter I find that it embodies all the provisions of the acts of 1851 and 1859, except one of a temporary character, and another not bearing on this case, which had probably been previously repealed. And all those provisions are retained in the revision, in large part, in the very words of those acts. The only instance in which such a change in phraseology and arrangement was made, as fairly to admit of question as to the intent of Congress, is section 4820.

"From the results of that examination, taken in connection with the general terms of section 5595, I am led to the general conclusion that, prima facie, Congress did not, in that chapter, intend to legislate in regard to the

merely because he had contributed 12½ cents, or, as in the case of this claimant, $4.57 out of his pay to the funds of the Home.

"Of course I understand that this view should not necessarily control the interpretation of plain and clear words; but when the question is not as to the meaning of certain words in an act of original legislation, but whether it was the intention of Congress, by the use of those words in a revision, to reinstate on the statute-book a former system which, more than fifteen years before, it had, by amendatory law, condemned and cast out, then the unjust character of that system affords ground for presuming that Congress did not intend to return to it.

"The conclusion that they did not so intend is enforced by the consideration that neither the commissioners nor Congress, if they in fact intended to make a change, would probably have attempted it by the mere interpolation of a word of reference, but would have expressed their intention in direct and plain terms.

"The conclusion at which I have thus arrived is attainable, also, by an examination of the text of section 4820; in regard to which I am satisfied with the views expressed by the Attorney-General in his opinion given to the Secretary of the Interior, as follows:

"'But the same conclusion is reached by a more strictly grammatical interpretation of section 4820. Thus the words "all such pensioners," in the second sentence of that section, may be taken to refer to all pensioners who come within the words of description used in the preceding sentence, namely, "One to whom a pension has been granted for wounds or disability received in the military service." The "fact" mentioned in such preceding sentence, that "he has not contributed to the

funds," is not descriptive of the pensioner, but of a circumstance or condition which may or may not be affirmed of the pension already described.

"Had the design been to limit the application of the second sentence to a pensioner who has not contributed, the legislature, instead of saying, 'but all such pensioners shall surrender their pension,' &c., would probably have said, 'but in such case the pensioner shall surrender his pension,' &c., or have employed some equivalent expression referring to the circumstance or condition above mentioned, as well as to the pensioner.

"But even supposing that the letter of section 4820 can be forced into the construction placed upon it by the court, the question then is whether that construction shall prevail against the clearly expressed intent of Congress to embody in the revision the law as it previously stood. A sound principle in statutory construction is thus formulated by high judicial authority, that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. (People *vs.* Utica Ins. Co., 15 Johnson, 358, 381; Jackson *vs.* Collins, 3 Cowen, 39; Canal Co. *vs.* Railroad Co., 4 Gill & Johnson, 1.)"

The Chief Justice then goes on to quote from the case of Ryegate *v.* Wardsboro (30 Vermont, 746).

The case of Boucicault *v.* Hart (13 Blatchford, p. 47), cited by Judge Hunt, of the Court of Claims, has no application, for in that case there was no assertion of any change in the law; the case turned on the failure of Boucicault to deposit in the mail two copies within ten

days after publication; and although Mr. Justice Hunt says (p. 56) "the language of the Revised Statutes is stronger than that of the act of 1870," yet the act of 1870 was sufficient to sustain the decision.

The case of United States *v.* Hammond (2 Woods, 197) is totally different from the present one. Whatever may have been the intention or want of intention on the part of the revisers, the incorporation bodily of section 820 into the Revised Statutes permitted no legal doubt as to the intention of Congress. The words "*Be it enacted*," &c., at the commencement, cover the whole statute, and section 820 became as vital a law as any passed at that session. But the distinction between that case and the present one is: there, through the inadvertence of the revisers, Congress passed a *new law;* here it is asserted that a change was wrought in existing law, and that not by compact and expressive sentences, but by the interjection into the statute revised of a qualifying word.

Section 820 was so unequivocal, and indeed so violent a departure from the enunciation of section 5595, that it would be absurd to attempt any reconciliation between the two.

The citation by Judge Hunt, in the opinion of the court below, from Ellis *v.* Paige (1 Pick., 45; record, page 6) is doubtless true in its general application, but here our construction must be governed and controlled by the general intention of Congress not to change the law. And no more striking evidence of this purpose of Congress can be found than the interval of time between the operation of the law and its passage.

CHARLES DEVENS,
Attorney-General.
JOHN S. BLAIR.

APPENDIX.

DEPARTMENT OF JUSTICE,
Washington, November 22, 1877.

SIR: By your letter of the 29th ultimo, inclosing copies of correspondence between the Commissioner of Pensions and the commissioners of the Soldiers' Home, in relation to a ruling recently made by the former, my opinion is requested upon the following question:

"Is the Soldiers' Home in the District of Columbia entitled to the pensions of *all* pensioners during the period they voluntarily receive its benefits, or is it entitled to the pensions of those pensioners only who have not contributed to its funds in accordance with the provisions of section 4819, Revised Statutes?"

This question involves an interpretation of section 4820 of the Revised Statutes, which reads as follows: "The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

It appears that the Commissioner of Pensions regards the last sentence of the section above quoted as applicable solely to pensioners who have not contributed to the funds of the Soldiers' Home, and, agreeably to this view, he, in the ruling referred to, holds that the Home is en-

titled to the pensions of these pensioners only. After careful examination of the subject, I arrive at a different result, namely, that the provision just adverted to comprehends pensioners who have thus contributed, as well as those who have not, and that the Home is entitled to the pensions of both the one and the other, during the time they shall respectively remain therein and voluntarily receive its benefits.

Prior to the adoption of the Revised Statutes, the law relating to this subject was embodied in the act of March 3, 1851, ch. 25, and the act of March 3, 1859, ch. 83. The former act, after declaring in the first and fourth sections who should be members of the asylum and who should be entitled to the benefits thereof—both members and beneficiaries being, by the terms of those sections, confined to *contributors*, according to the seventh section of the same act—by a *proviso* in the fifth section enacted: "That any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided upon transferring his pension to said asylum for and during the period that he may voluntarily continue to receive such benefits."

The construction put upon this provision by those who were charged with the execution of the statute was that all pensioners, on account of wounds or disability incurred in the military service, were thereby required, in order to become entitled to the benefits of the asylum, to transfer their pensions to the same for and during the period they might remain therein and receive its benefits. And this construction appears to be entirely consistent with the intent of Congress. The object of

the *proviso* was to extend the benefits of the asylum to all disabled soldiers for whose support provision may have already been otherwise made by the grant of pension thereto; and the introduction of the clause, "although he may not have contributed to the funds of the institution," was obviously designed for greater explicitness and to preclude any doubt as to whether such pensioners as may not have contributed according to the seventh section were also comprehended. That part of the act which is now under consideration was a measure of economy, looking to the removal of some of the causes that had theretofore induced Congress to allow extraordinary pensions. It was believed this might be done by founding an asylum in which all pensioners who were not able to support themselves on the ordinary pension would find a comfortable home. The *proviso* was intended to carry out this view.

By the fifth section of the act of 1859, the benefits of the act of 1851 were extended to the invalid and disabled soldiers, whether regulars or volunteers, of the war of 1812, and of all subsequent wars; and by the sixth section it was provided, "That all pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the institution for and during the time they may remain therein and voluntarily continue to receive its benefits." This provision is substantially a re-enactment of what was contained in the above-mentioned *proviso*, according to the construction of the latter already adverted to. It was enacted, perhaps, from mere prudential considerations, in view of the extension of the act of 1851 to a new class of beneficiaries, the immediate purpose being to leave no room for any question of construction

respecting the transfer and surrender to the institution of pensions granted to them while remaining therein and receiving its benefits, though the provision in terms and effect embraces all pensioners on account of wounds or disability incurred in the military service.

Such was the state of the law touching the right of the Soldiers' Home to the pension of pensioners who remain therein and receive its benefits, at the time of the adoption of the Revised Statutes.

The inquiry now is whether section 4820 of the revision works a modification of the previous law. Unless the terms of this section clearly indicate that a change in the law was intended, and if they may be fairly construed so as to reproduce the law as it previously stood, instead of plainly requiring a different interpretation, in such case to give to the section a modifying effect would be unwarranted. The aim of Congress in enacting the Revised Statutes was not so much to *amend* former laws as to *revise and consolidate* them.

It will be observed that the provisions of the first and fourth sections of the act of 1851 and the fifth section of the act of 1859, declaring who shall be members of the institution and who shall be entitled to the benefits thereof, are substantially re-enacted in sections 4814 and 4821 of the Revised Statutes; and in construing section 4820 (which would seem to have been made up from the *proviso* in the fifth section of the former act and from the sixth section of the latter act), it should be read in connection with the two sections of the revision just cited.

Section 4821 describes three classes of soldiers, being members of the Home, according to section 4814, who are to be entitled to its benefits; but it is silent as to

pensioners. The first two of these classes correspond to those provided for by the fourth section of the act of 1851, and in terms embrace *contributors* only; the remaining class corresponds to that provided for by the fifth section of the act of 1859, and is not restricted to contributors. In the first two of these classes, it was well understood, are to be found pensioners; so, also, it was known that pensioners are to be found in the last-mentioned class; and some pensioners there may be who do not strictly fall within either class, and who were in the mind of the legislature.

To meet these different cases, and carry out one of the main purposes originally contemplated in establishing the Home (namely, to provide a place in which all pensioners on account of wounds or disability, who are not able to support themselves on the ordinary pension, may find a comfortable home), is the design of section 4820. It declares, in the first place, that "the fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto." This is the only section which, in express terms, makes provision for pensioners, and the fair implication from the language just quoted is, that pensioners for wounds or disability who *have* thus contributed, as well as those who have *not*, are to be admitted to the Home. It is equivalent to saying that *all* pensioners on account of wounds or disability received in the military service are entitled to admission thereto. The same section then adds: "But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits." The words "all such

pensioners" here mean all persons to whom pensions have been granted for wounds or disability received in the military service. They are to be understood as including all pensioners who, either expressly or impliedly, come within the *scope* of the preceding sentence in so far as it provides for admission to the Home; and that, as has been already observed, extends to those who have contributed as well as to those who have not contributed.

Agreeably to this view, section 4820 embodies nothing more nor less than what is contained in the provisions of the law previously in force, to which I have already referred (viz, the *proviso* in the fifth section of the act of 1851 and the sixth section of the act of 1859).

But the same conclusion is reached by a more strictly grammatical interpretation of section 4820. Thus the words "all such pensioners," in the second sentence of that section, may be taken to refer to all pensioners who come within the words of description used in the preceding sentence, namely, "one to whom a pension has been granted for wounds or disability received in the military service." The "fact" mentioned in such preceding sentence, that "he has not contributed to the funds," is not descriptive of the pensioner, but of a circumstance or condition which may or may not be affirmed of the pension already described.

Had the design been to limit the application of the second sentence to a pensioner who has not contributed, the legislature, instead of saying, "But all such pensioners shall surrender their pensions," &c., would probably have said, "But in such case the pensioner shall surrender his pension," &c., or have employed some equivalent expression referring to the circumstance or

condition above mentioned, as well as to the pensioner. In construing a statute, the chief aim of which was to "revise and consolidate" the pre-existing laws, that meaning which involves the least departure from the letter is to be preferred.

I have, therefore, the honor to state, in direct answer to the question proposed by you, that, in my opinion, the Soldiers' Home in the District of Columbia is entitled to the pensions of all pensioners during the period they voluntarily receive its benefits, including as well the pensions of those who have contributed to its funds, in accordance with section 4819, as the pensions of those who have not so contributed.

I am, sir, very respectfully,

CHAS. DEVENS,
Attorney-General.

Hon. CARL SCHURZ,
Secretary of the Interior.

Supreme Court of the United States.

OCTOBER TERM, 1879.—No. 875.

THE UNITED STATES, APPELLANT,

vs.

CHARLES BOWEN.

This is an appeal from the Court of Claims.

The Court of Claims found the facts and conclusions of law as follows:

"I. The claimant was a private in Company B, Third Regiment United States Infantry, from the 9th March, 1861, to the 9th March, 1864, and during that time, under the provisions of section 7, act 3d March, 1859, (11 Stat., 434,) there was deducted from his pay the sum of $4.57.

"II. An invalid pension was granted to him March 13, 1865, at $8 per month, commencing March 9, 1864, by certificate 39,050; the monthly rate of such pension was increased from $8 to $15, January 21, 1867, to commence June 6, 1866; and from $15 to $18, July 8, 1876, to commence June 4, 1872.

"III. On the 13th September, 1876, he was admitted as an inmate to the Soldiers' Home, and his pension from that date to the 4th December, 1877, to wit, the sum of $264.60, has been regularly paid to the treasurer of that institution.

"Upon the foregoing facts, the conclusion of law is that the claimant should recover the sum of $264.60."

POINTS.

I.

Section 1 of chapter 25 of the acts of Congress for the year 1851, entitled "An act to found a military asylum for the relief and support of invalid and disabled soldiers of the Army of the United States," provided "that all soldiers of the Army of the United States" * * * who have contributed, or may hereafter contribute, * * * to the support of the military asylum hereby created, "shall be entitled to be members of the Soldiers' Home and entitled to its benefits."

9 Stats. at Large, sec. 1, ch. 25, p. 595.

Section 5 of the same chapter provides that any soldier who has not contributed shall be entitled to the benefits of the Home, &c., on assigning his pension certificate.

Stats. at Large, sec. 5, p. 596.

Section 6 of chapter 83 of the acts of Congress for the year 1859,—*being the army appropriation act*,—provides that all pensioners shall transfer and surrender their pensions to the institution for and during the time they receive the benefits of the "Home."

11 Stats. at Large, sec. 6, chap. 83, p. 434.

Chapter 2 of the Revised Statutes, entitled "The Soldiers' Home," contains the following section: "Sec. 4820.—The fact that one to whom a pension has been granted for wounds or disability received in the military service, has not contributed to the funds of the Soldiers' Home, shall not preclude him from admission thereto; but all *such* pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

Revised Stats., sec. 4820, p. 943.

This section repealed all acts prior to the year 1873, "any portion of which is embraced in any section of the revision, and the section applicable shall be in force in lieu thereof."

Revised Stats., sec. 5596, p. 1091.

II.

A portion of, and in fact the substance of, section 1 and section 5 of the act of 1851, and also of section 6 of the act of 1859, is embraced in section 4820 of the Revised Statutes; hence section 4820 of the revision was the only act in force at the time of the payment of the pension-money due the claimant to the Soldiers' Home.

By this statute, all former acts relating to the subject-matter therein contained were repealed.

III.

Chapter 2 of title 59 of the Revised Statutes, entitled "The Soldiers' Home," was evidently intended by Congress as the law which should regulate and govern the Soldiers' Home, and to repeal all existing laws relating to the same subject.

It provides who are entitled to be members; how it shall be governed; what funds shall be "set apart and appropriated" for its support; makes provision for the rights of pensioners, and defines who shall be entitled to, and who excluded from, its benefits, thus making provision by law for the regulation and control of the institution, in all respects, without reference to prior acts of Congress.

It covers the whole subject of all prior laws regulating the "Soldiers' Home," embraces all that was intended to be preserved of the old law, and becomes a complete law in itself, providing everything necessary to a complete and perfect management and discipline of the "Soldiers' Home." Such is the natural inference from the general character

and particular indications of the chapter, and leave no room for doubt as to the intention of the framers of the statute.

Such a statute repeals all former statutes on the same subject.

Ellis *v.* Page, 1 Pick., 45.
Smith's Comm. on Stat. Constr., secs. 785, 786.
Boucicault *v.* Hart, 13 Blatch., 52.
Holmes *v.* Wiltz, 11 La. Ann. Rep., 446.
United States *v.* Hammond, 2 Wood C. C., 203.
Jones *v.* Smart, 1 Tenn., 44.

IV.

Section 4820 of chapter 2 of the Revised Statutes is expressed in clear, concise, and intelligible language, and leaves nothing for interpretation or conjecture.

7 Mass., 523, 524.

In Jackson *v.* Lewis, 17 Johnson, 477, the court say:

"Let us rather apply to this case the excellent sense and the unsophisticated simplicity of Vattel in the rules which he gives for the interpretation of treaties. 'It is not permitted,' he says, (B. 2, c. 17, sec. 263,) 'to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest and leads to nothing absurd, there can be no reason to refuse the sense which naturally presents. To go elsewhere in search of conjectures in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted, there will be no act which it will not render useless.'"

V.

The construction given by the Commissioner of Pensions, the officer charged with the duty of executing this statute, is the same as that asked for by the claimant.

On this point, Mr. Justice Hunt, in the very able opinion

given by him in this case in the Court of Claims, says (see Record, p. 3):

"The construction given to these statutes by the Commissioner of Pensions was in accordance with these views, until recently, when this case arose, and the interpretation by that officer is entitled to much weight. In the case of the United States *v.* Moore, the Supreme Court said: 'The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons.' (Edwards *v.* Darby, 12 Wheat., 210; United States *v.* The State Bank, 6 Pet., 29; United States *v.* McDaniel, 7 Id., 1.) The officers concerned are usually able men and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret." (95 U. S., 763.)

VI.

But it is unnecessary to contend that the subsequent statute repeals the former one by implication, for the repealing clause heretofore referred to repeals all former acts in express terms. It says:

"All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the sections applicable thereto shall be in force in lieu thereof."

Rev. Stats., sec. 5596, *p.* 1091.

See Opinion, Hunt, J.
Record, pp. 6, 7.

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